IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 454 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

METDIST INDUSTRIES LIMITED

Versus

VASABHAI DESURBHAI

Appearance:

1. Civil Revision Application No. 454 of 1997

MR SI NANAVATI for Petitioner No. 1

MR YOGESH S LAKHANI for Respondent No. 1-2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/11/2002

ORAL JUDGEMENT

#. This is a Revision Application under section 115 of the Code of Civil Procedure (1908) [as amended in 1976].

This Revision Application has been filed by the petitioner-original defendant challenging the order passed by Civil Judge, J.D., Rajula on 13th March 1997 below Exh. 32 in Regular Civil Suit No. 8 of 1997.

#. The opponent plaintiff had filed the suit against the petitioner-defendant for an appropriate declaration and injunction, claiming easement rights in respect of a pond and a sthanak of Nagdevta in land bearing Survey No. 666 of Rajula. In the said suit, on an application made by the opponent plaintiff, the Court appointed a Commissioner and issued directions to him to make a panchnama in respect of the suit property and also issued appropriate directions to the Commissioner. The Commissioner infact visited the site in question, prepared a necessary panchnama and filed the same before the trial Court. However, it appears that according to the opponents-original plaintiffs, this panchnama prepared by the Court Commissioner was incorrect and, therefore, the opponents-plaintiffs filed another application, Exh. 32, for appointment of a Commissioner in order to bring the appropriate facts on record by another panchnama to be prepared by the Commissioner and in order to meet with the inaccuracies in the report prepared and filed by the first Commissioner. This application made by the opponent plaintiff at Exh. 32 was granted by the trial Court by its order dated 13th March 1997. It is this order which is the subject matter of the present Revision.

#. It is both relevant and pertinent to note that the Code of Civil procedure (1908), has been amended by the Code of Civil Procedure (Amendment) Act, 1999, which was published in the Gazette of India dated 30th December 1999. However, by virtue of the Notification issued under section 1, subsection (2) of the said Amendment Act, the amendment came into force from 1st July 2002.

#. For the present purposes, it requires to be noted that section 12 of the Amendment Act amends and modifies section 115 of the principal Act, whereby (inter alia) a new proviso has been substituted as under:

> "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

It therefore becomes obvious that the High Court while exercising its powers of revision under section 115 of the Code (as amended), would be justified in entertaining such a revision application, and/or interfering with the impugned order, only where the impugned order, if it had been made in favour of the applicant in revision, would have finally disposed of the suit or other proceedings. In other words, a revision under section 115, after the amendment, would be entertainable only if the applicant in revision can successfully contend that if the trial court had granted the application made by the applicant, it would have disposed of the suit or other proceedings (as the case may be).

#. It is also relevant to note that the aforesaid Amending Act of 1999, vide section 32 thereof, deals with repeal and savings.

5.1 By virtue of section 32, subsection (2), clause (i), the amendment introduced by section 12 of the Amending Act shall not affect any proceeding for revision which had been finally disposed of. Obviously, therefore, the only proceeding which the amendment does not and cannot affect is a revision which has been finally disposed of. In other words, any revision application which is pending admission, or pending final hearing after admission, would be governed by the amendment introduced by section 12 of the Amending Act.

#. On the facts and circumstances of the case, it cannot be said that the application made by the present applicant in revision, had it been granted by the trial court, would have disposed of the suit. Under the circumstances, it must be found that this court cannot "vary or reverse any order made, or any order deciding an issue ....".

#. It necessarily follows that the present revision is therefore not maintainable and/or incompetent.

#. The aforesaid view has also been expressed by this Court in the case of Parakramsinh Vikramsinh Jadeja vs. Yogi Corporation, reported at 2002 (3) GLR page 2040.

#. This Revision Application is, therefore, dismissed. Rule is discharged with no order as to costs. Ad-interim relief stands vacated.

(Y. B. BHATT, J.)

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